

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4085 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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RABARI HAMIR VASHRAMBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR BHARADE FOR MR PB MAJMUDAR for Petitioner  
MR.NEEGAM SHUKLA,AGP for Respondents. 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 19.4.1996 whereby the petitioner's was detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985 by the District Magistrate, Bhavnagar. The detention order was executed on 20.4.1996 and since then the petitioner is under detention lodged at Porbandar

Special Jail, Porbandar. This Special Civil Application was filed in this Court on 14.6.1996 and on 18.6.1996 Rule returnable for 10.7.1996 was issued. The respondents have filed affidavit-in-reply under the signature of Shri B.B.Swain, District Collector and District Magistrate, Bhavnagar. The grounds of detention enclosed with the detention order show that 3 criminal cases were registered against the petitioner for various offences under IPC chapters 16 & 17 in the year 1995-96. The Detaining Authority also considered the statements made by four witnesses regarding petitioner's criminal case and antisocial activities as also the fact that earlier on 6.3.1996 an order of externment had been passed against the petitioner and the same had been violated by him on 19.4.1996. It is given out by Mr.Shukla that even at the time when the externment order was passed the passing of the detention order was contemplated but at that time the detention order was not passed keeping in view of the fact that externing authority had passed the externment order on different facts and grounds noted and considered by the authority which passed the externment order. The petitioner violated the externment order on 19.4.1996 and therefore the Detaining Authority having felt that externment order has not served the purpose and the petitioner has violated the externment order without permission of the concerned authority it chose to pass the detention order. The case of the petitioner is that on 19.4.1996 he was required to attend the criminal case in the Court at Bhavnagar and therefore he had come to Bhavnagar for attending the Court date. It is ofcourse admitted by the petitioner that he had not sought the prior permission. The petitioner has produced copy of the order sheet in the aforesaid criminal case and has also filed an undertaking that in future he would not violate the externment order and would also abide by all the conditions of externment order till the period of externment is over. In view of the fact that the petitioner had come at Bhavnagar to attend the Court date and in view of the undertaking filed by him to abide by the condition of externment till the period of externment is over and keeping in view the fact that the allegations which have been relied upon by the Detaining Authority do not constitute the case of breach of public order and at the most it can be said to be a case of breach of law and order only and coupled with the further fact that co-detenu has also been released and the detention order with regard to the co-detenu has been quashed on this ground in Special Civil Application No. 7480 of 1996 dated 16.10.1996 the impugned detention order dated 19.4.1996 cannot be sustained in the eye of law but the

externment order will stand with full force against the petitioner even if the detention order is set aside.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 19.4.1996 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. However, the externment order dated 6.3.1996 would stand against the petitioner and the petitioner would abide by all the terms of the externment order and the undertaking dated 28.10.1996 filed before this Court in this Special Civil Application. Rule is made absolute accordingly.

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